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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 16.10.2006.

Shamma Rani .... Petitioner.

vs

Shri Mohan Lal and another ... Respondents

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Sandeep Singh Majithia,Advocate,for the petitioner.

Kiran Anand Lall, J.

This revision is directed against the judgment dated 3.6.2006 vide which appeal of Shamma Rani-tenant, bearing RA No.54/2005, was dismissed, and appeal of Mohan Lal-landlord, bearing RA No.168/2005, was partly allowed.

The Rent Controller ordered the ejectment of the petitioner-tenant, holding her to be in arrears of rent for the period 1.6.1996 to 31.12.2001, at the rate of Rs.60/- per month, but further observed, in view of the law laid down in 2002 (1) RCR 514 *Rakesh Wadhawan vs. M/s.Jagdamba Industrial Corporation*, that in case the amount of arrears of rent was paid to the respondent, within two months, she (petitioner) would not be evicted from the premises. The issue of bonafide requirement of premises was, however, answered against Mohan Lal-landlord.

Both sides filed appeals against the judgment of the Rent-Controller, wherein the appellate authority answered the issue of bonafide requirement also in favour of the respondent-landlord, and ordered ejectment of the petitioner on this ground and also on the ground of non-

payment of rent. It was further observed that petitioner-herein had not paid the arrears of rent, even within the period (of two months) allowed by the Rent-Controller.

According to the petitioner-tenant, findings of the appellate authority on the point of her being in arrears of rent and also with regard to the bonafide requirement of the respondent-landlord, are liable to be set aside as being perverse and against the evidence on record.

But, after hearing the learned counsel and going through the judgment of the appellate authority, I, however, do not find that it suffers from any such defect or even error of jurisdiction.

The specific case of respondent-landlord was that rent is due from the petitioner-tenant with effect from 1.6.1996 till the date of filing of petition. The version of petitioner-tenant, on the other hand, was that rent was due from her, for the period 1.1.2002 to 31.10.2002 only, and she had tendered rent for this period (1.1.2002 to 31.10.2002) before the Rent-Controller. Therefore, dispute survived only for the period with effect from 1.6.1996 to 31.12.2001. The respondent-landlord having stoutly controverted the receipt of rent for this period, heavy onus lay on the petitioner-tenant to prove the payment of rent, for this period. But, as rightly found by both the courts below, she badly failed to discharge this onus. The only evidence led by her to prove this payment was her own statement, and nothing more. According to her, she had made the payment but no receipt was issued. But, she was falsified in this regard by her own son, Gopi (RW2), who made a categorical statement to the effect that receipts regarding payment of rent used to be given by the wife of the landlord. Since, there cannot be any possible reason to disbelieve the statement of

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petitioner's own son, it had to be held that the non-availability of rent-receipts for the period under reference is explainable, on the only hypothesis that rent for this period was not paid. And, this is what the courts below have held.

Nothing wrong can be found, even with the finding of the appellate authority on the point that the respondent-landlord requires the demised premises for his own use and occupation and that of his family members. The only residential accommodation in his possession, is one kitchen and two rooms on the first-floor and a latrine on the top-floor. As mentioned in para no.15 of the judgment of the appellate authority, the rooms are of medium size, and a corner of one of those rooms is being used as a bathroom. Two sons of the respondent are studying. They require, atleast one room for their study. The respondent also requires a guest-room for the stay of his sister who is married locally and who often visits him along with her two sons. None of these facts was disputed by the learned counsel for the petitioner-tenant, during arguments, before this court or before the appellate authority. As such, there is no ground to upset the finding of the appellate authority, even with regard to the bonafide requirement of the respondent-landlord.

The revision shall, accordingly, stand dismissed, in limine.

16.10.2006. (Kiran Anand Lall)
vs. Judge.